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Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
 )  
Rules and Regulations Implementing the ) CG Docket No. 04-53  
Controlling the Assault of Non-Solicited )  
Pornography and Marketing Act of 2003 )

To: The Commission

**COMMENTS OF DOBSON COMMUNICATIONS CORPORATION**

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## SUMMARY

The CAN-SPAM Act requires the FCC to implement rules to protect CMRS subscribers from unwanted or unauthorized “mobile service commercial messages” or “MSCMs.” The Commission’s proposed rules should define “MSCMs” as only those messages sent to email addresses with domains (or subdomains) issued by CMRS providers specifically to enable transmission to wireless mobile handsets. The definition of MSCM in the Act does not allow the FCC to apply its rules to messages sent to other email addresses, even though a CMRS subscriber could potentially access such messages using a wireless device.

The rules adopted by the FCC to counter unsolicited MSCMs should be directed at the senders of the MSCMs and not at the CMRS providers. The FCC can best implement the spirit of the Act by adopting a rule that flatly bans MSCMs addressed to email addresses with Internet subdomains assigned by CMRS providers, unless the recipient has “opted in” to receive messages from the sender. The Commission could require creation of a list of subdomains used by CMRS carriers to provide mobile wireless email services to subscribers. The rule would obligate senders (unless the sender has the recipient’s permission) to check the list frequently to avoid sending commercial messages to addresses with domains on the list. Dobson submits that this approach would be much more effective than the other methods proposed in the *Notice*.

As suggested by the Act, the FCC should exempt CMRS carriers from any requirement of obtaining consent from their subscribers before sending MSCMs. Unlike any other sender of MSCMs, a CMRS carrier can ensure that recipients are not charged for receiving or reading the MSCM. Also, among available alternatives for a carrier to contact its subscribers, an electronic message to the wireless device is often the least intrusive. Finally, given the special relationship between a carrier and its subscribers, a carrier is uniquely positioned to provide MSCMs on a narrowly tailored basis to certain subscribers sharing common characteristics. Requiring an “opt in” instruction from each subscriber would be a very burdensome and expensive task, and as a practical matter would greatly reduce the value of an important communications channel between carriers and subscribers.

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Dobson Communications Corporation (“Dobson”)<sup>1</sup> hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>2</sup> The *Notice* seeks comment on implementing rules to protect CMRS subscribers from unwanted or unauthorized “mobile service commercial messages” or “MSCMs.” As discussed below, Dobson supports Commission rules that would define “MSCMs” as only those messages sent to email addresses with domains (or subdomains) issued by CMRS providers specifically to enable transmission to wireless mobile handsets. Dobson also believes that any rules adopted by the FCC to counter unsolicited MSCMs are properly directed at the senders of the MSCMs and not at the CMRS providers.

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<sup>1</sup> Dobson, through its various subsidiaries, is licensed to provide wireless telecommunications service in portions of 16 states stretching from Alaska to New York.

<sup>2</sup> *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, CG Docket No. 04-53, *Notice of Proposed Rulemaking*, FCC 04-52 (rel. Mar. 19, 2004), *summarized*, 69 Fed. Reg. 16873 (Mar. 31, 2004) (“*Notice*”).

## INTRODUCTION

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act” or the “Act”)<sup>3</sup> is an attempt to limit the scourge of unsolicited bulk commercial email, or “spam.” The Act makes the most egregious spamming practices into federal crimes, and regulates the sending of any commercial electronic mail messages, whether or not in bulk. Senders of commercial email messages are also required under the Act, among other things, to include “opt out” instructions in the message, and to comply with opt out requests in a manner similar to do-not-call requests.

Congress directed the Commission to issue rules under Section 14 of the Act “to protect consumers from unwanted mobile service commercial messages.” Dobson wholeheartedly supports the Commission’s goal of reducing wireless spam. Yet it is important that the Commission recognize that Congress has delegated most of the responsibility for addressing the spam problem to the Federal Trade Commission. The FCC’s mandate is limited only to issuing rules with respect to MSCMs. Modern wireless networks, including Dobson’s, enable subscribers to read almost any type of email message on a variety of what could be considered wireless devices. However, Congress did not intend that any commercial email messages that *could* be read on a wireless device would be MSCMs and therefore subject to the FCC’s rules as well as the FTC’s rules.

Accordingly, Dobson offers below its view of how the Commission should determine the appropriate scope of the definition of “mobile service commercial message” and thus the scope for the Commission’s proposed rules. Dobson also seeks to inform the Commission on the best available methods to provide CMRS subscribers with the means to avoid receiving MSCMs that

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<sup>3</sup>Pub. L. No. 108-107, 117 Stat. 2699 (2003).

they have not authorized. Finally, Dobson explains why the Commission should, as Congress suggests in Section 14(b)(3) of the Act, exempt CMRS carriers from obtaining prior permission from a subscriber before sending the subscriber an MSCM.

## **DISCUSSION**

### **I. Definition of Mobile Service Commercial Message**

Under the Act, an MSCM is a “commercial electronic email message that is transmitted directly to a wireless device that is utilized by a [CMRS] subscriber . . . in connection with such service.”<sup>4</sup> For the reasons below, we agree with the Commission’s proposed interpretation of the definition of MSCM as including only messages sent to electronic mail addresses provided by CMRS providers for delivery to subscribers’ wireless devices.<sup>5</sup> Under our proposed interpretation, the definition of MSCM would not include messages sent to other email addresses, even though a CMRS subscriber could potentially access such messages using a wireless device.

#### **A. SMS and MMS Messages**

Short Message Service (“SMS”) messages are text messages delivered through the carrier’s network directly to the recipient’s handset. SMS is a limited technology for mobile phones only. Messages generally may not exceed 160 characters. Multimedia Message Service (“MMS”) technology is an extension to the SMS protocol which enables the transmission of wireless messages that include images and audio in addition to text. MMS is the protocol

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<sup>4</sup>CAN-SPAM Act, § 14(d).

<sup>5</sup>*Notice* at ¶ 10.

currently used by most carriers for camera phone messages. Unlike email, SMS and MMS protocols were developed specifically for the wireless telephone network, and the messages do not necessarily travel over the Internet (although in some cases they do, as explained below).

As the Commission notes, the legislative history suggests that Congress intended Section 14 of the Act to apply to text messaging like SMS where the definition of MSCM applies.<sup>6</sup> However, under the Act, an MSCM must be an “electronic mail message,” and the Act defines an electronic mail message as a message delivered to a recipient with an address that includes a reference to an Internet domain.<sup>7</sup> As explained below, SMS and MMS messages may be addressed in one of two ways. SMS and MMS messages may be sent directly to mobile phone numbers, without a reference to an Internet domain. Such messages, by definition, are thus beyond the reach of the FCC’s jurisdiction under the Act. However, the sender may also direct an SMS or MMS message to an Internet address supplied by the CMRS carrier. Such a message is properly considered an MSCM and the Commission may therefore promulgate rules under the CAN-SPAM Act regarding such messages.

1. Messages Delivered through Carrier Networks Only

The traditional means of sending an SMS or MMS message is for the sender to use a wireless handset to address the message to the recipient’s telephone number, without reference to an Internet domain name. Like other CMRS carriers in the United States, Dobson routes SMS and MMS messages sent from a wireless handset through a short message peer-to-peer (“SMPP”) gateway through a closed network that is not connected to the public

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<sup>6</sup> Notice at ¶ 15.

<sup>7</sup> CAN-SPAM Act, §§ 3(2), (5), (6).

Internet. For example, an SMS message sent to a Dobson subscriber from another Dobson subscriber or a subscriber of a different CMRS provider would be routed much like a voice call through interconnecting telephone carriers (utilizing a clearinghouse such as InphoMatch), and not via the Internet. Accordingly, Dobson considers its SMS/MMS messaging offerings to constitute a proprietary service over which it should continue to maintain sole control.

It is important to protect CMRS subscribers from a torrent of unsolicited commercial SMS or MMS messages, and Dobson employs its own internal means to prevent unauthorized use of its SMS/MMS offerings. Dobson believes, however, that it would be a mistake for the Commission to overextend the definition of MSCM to include all commercial SMS or MMS messages, particularly in view of the statutory definition requiring reference to an Internet domain. The Commission has already noted that a non-Internet SMS or MMS message sent to a phone number is a “call” for purposes of the Commission’s rules under the Telephone Consumer Protection Act (“TCPA”).<sup>8</sup> Accordingly, CMRS subscribers already have adequate protections from unwanted SMS and MMS messages under the TCPA and the FCC’s rules promulgated thereunder. For example, senders of commercial SMS must comply with the restrictions on use of an autodialer, and cannot send messages that constitute “telemarketing” to numbers that have been placed on the national Do-Not-Call list (unless one of the exceptions in the TCPA rules applies).<sup>9</sup> Active enforcement of the TCPA rules is a sufficient deterrent to those intending to send non-Internet SMS or MMS spam.

Internet email spam has become a problem largely because the spammers can send their messages to thousands of addresses at virtually no cost. In contrast, there are practical

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<sup>8</sup>Notice at ¶ 6; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd 14,014 (2003), 14,115.

<sup>9</sup>See 47 U.S.C. § 227; 47 C.F.R. § 64.1200.



constraints on the ability to send non-Internet SMS/MMS messages in bulk, including the difficulty in using a portable device such as a wireless phone to address multiple messages, and the fact that senders would be charged by their CMRS carrier to send the messages. For the above reasons, it is not surprising that non-Internet SMS and MMS messages have not constituted a large portion of the wireless spam problem. As we explain below, the risk of a deluge of unsolicited bulk commercial SMS or MMS messages is much greater in the case of such messages delivered via the Internet.

## 2. Internet Transmission of SMS and MMS Messages

Dobson, like many other carriers, also enables its CMRS subscribers to receive SMS or MMS messages sent to them via the Internet. For example, a sender may use a personal computer with an Internet connection to send an email to a Dobson subscriber by addressing the message to the address “*phonenumber@mobile.dobsoncellular.com*.” The message will traverse the Internet to reach Dobson’s SMTP (simple mail transfer protocol) gateway provided for this purpose. Dobson then converts the message at its SMTP gateway to SMS,<sup>10</sup> and delivers it to the recipient via Dobson’s network. As mentioned above, this means of transmission is much more likely to be used by senders of unsolicited bulk commercial messages, because the sender can use a computer to automatically send the message to multiple addresses. Also, by using the Internet to send the message instead of a CMRS network, the message can be sent in bulk at virtually no cost.

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<sup>10</sup>Dobson is currently in the process of implementing a similar SMTP gateway for MMS messages.

Commercial SMS or MMS messages sent to CMRS subscribers through the Internet to the wireless provider's Internet gateway, and then delivered to a wireless device, squarely meet the definition of MSCMs under the Act and should be restricted by the FCC.

B. Electronic Mail Messages Received on Wireless Devices

The fact that a message is relayed over the facilities of a CMRS carrier is not by itself sufficient to make the message an MSCM and thus the proper subject of any future FCC CAN-SPAM rules. For example, as the *Notice* points out, CMRS carriers enable subscribers to use "Blackberry"-type devices to receive email messages addressed to email accounts that are not necessarily associated with a wireless device -- such as a home or work email account.<sup>11</sup> Also, some CMRS carriers allow subscribers to connect laptop computers, PDAs, etc. via "wireless device" components to the carrier's network for Internet and email access. Some carriers may also offer Wi-Fi access points, or enter into peering arrangements with companies that do so, so that CMRS subscribers can access Internet email. Finally, cellular handsets will get "smarter" and likely become "the ultimate converged end-point device."<sup>12</sup> This will mean that most handsets in the future will have the capability to read Internet email.

If the recipient's email address is assigned by an entity other than a CMRS carrier, there is currently no way for a sender of a commercial email message to know that the recipient will access the message over a wireless network and by any variety of wireless devices, whether a mobile phone or a laptop with a wireless modem. As a practical matter, therefore, the

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<sup>11</sup>*Notice* at ¶ 9.

<sup>12</sup>*Cellphones Get Smarter as Flash Memory Gets Cheaper, Better*, Wall St. J., Apr. 26, 2004, at B1.

Commission needs to look at the identity of the party providing the recipient's email account to determine which messages are properly considered MSCMs and which are not.

1. Email Addresses Supplied by Parties Other than CMRS Providers

Dobson agrees with the Commission that Congress did not intend Section 14 of the CAN-SPAM Act to cover messages to email addresses assigned by entities other than CMRS providers,<sup>13</sup> and there is support for this interpretation in the text of the Act. Unless the message is sent to an email address issued by a CMRS provider, the message must first be delivered through the facilities of the Internet service provider that issued the email account before it is forwarded to the carrier. Therefore, such "forwarded" messages are not "transmitted directly to a wireless device" used by a CMRS subscriber. In addition, the FTC's jurisdiction would extend to such email messages. For the purposes of regulatory compliance, it should not matter whether the recipient receives such messages over wired Internet access facilities such as DSL on a home computer, by use of the services of a CMRS provider to gain access to the mail server using in part the wireless carrier's network, or by using a Wi-Fi connection in a hotel or coffee shop.

2. Email Addresses Supplied by CMRS Providers

CMRS providers that offer email services may issue one or more email addresses to each subscriber. Messages sent to these addresses could be received using a variety of devices, such as personal computers, Blackberry devices or PDAs (or a combination of one or more of the above). In addition, many higher-end mobile phones are capable of receiving an

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<sup>13</sup>Notice at ¶ 16.

email sent to an Internet address, without the need to convert the message to an SMS or MMS message. As mobile phones become more advanced, most handsets will likely have this capability.

Dobson supports a definition of MSCM that would apply only to those messages sent to email addresses with specific subdomains assigned by CMRS carriers for certain specific wireless email offerings, such as those accessed via handsets or Blackberry devices, as opposed to laptop or desktop computers. An example of such an email address could be *name@mobile.dobsoncellular.com*, in which “mobile” is the subdomain used to notify senders that the recipient will be using a wireless device to receive messages. The Commission’s rules, as we explain in Section II below, then could obligate senders of commercial email to reference a list of such subdomains in order to comply with the Act.

## II. Methods of Allowing Users to Avoid Receiving Unwanted MSCMs

The Commission has noted several possible methods of allowing CMRS subscribers to avoid receiving unwanted MSCMs as required by the Act.<sup>14</sup> Unfortunately, most of the proposals mentioned in the *Notice* would place unneeded and expensive burdens on CMRS carriers.

Neither the text nor the spirit of the CAN-SPAM Act suggests that the responsibility for preventing wireless spam should fall on CMRS carriers. Rather, the thrust of the Act is to make the *senders* of commercial email messages responsible for compliance. The FTC and FCC (as well as other agencies) are empowered to bring enforcement actions against spammers who violate the Act, and senders of messages that violate the Act face serious financial penalties and

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<sup>14</sup>*Notice* at ¶¶ 22-34.

possibly criminal sanctions.<sup>15</sup> Email service providers -- whether wireline ISPs or wireless carriers -- are not the “bad guys” targeted by the Act.

Dobson suggests that the Commission adopt rules that are consistent with the thrust of the Act by flatly banning MSCMs addressed to wireless Internet subdomains, unless the CMRS subscriber-recipient has “opted in” to receive messages from the sender. The analogy to unsolicited facsimile advertisements is instructive. From the advertiser’s perspective, the messages are easily sent in bulk at little or no cost, but they are annoying and impose costs on the recipient. Current FCC rules address this problem by flatly prohibiting unsolicited advertisements to facsimile machines.<sup>16</sup>

Such a flat prohibition would be easy to implement and easy to comply with because the Commission could require creation of a list of subdomains used by CMRS carriers to provide mobile wireless email services to subscribers. The rule would obligate senders (unless the sender has the recipient’s permission) to check the list frequently to avoid sending commercial messages to addresses with domains on the list. In this sense, the rule would operate similarly to the current rules under the TCPA prohibiting telemarketers from using autodialers or pre-recorded messages for calls to wireless numbers, which require marketers to check lists of numbers that are off limits. It is noteworthy that the TCPA rules have generally been successful in limiting unwanted telemarketing to wireless numbers. The approach of placing responsibility on the sender to comply, with serious penalties for non-compliance, has a proven track record.

Dobson believes that the foregoing solution is the best available one to address the issue, and that it would be much easier for the Commission to administer than the other methods under

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<sup>15</sup>See generally CAN-SPAM Act, § 7.

<sup>16</sup> 47 C.F.R. Section 64.1200(a)(3).

consideration. Other methods are also unlikely to be very effective at reducing unwanted MSCMs. Specifically, Dobson wishes to point out the flaws it sees with some of the other methods proposed in the *Notice*:

***Filters.*** The *Notice* seeks comment on the use of filtering mechanisms to block unwanted MSCMs.<sup>17</sup> Dobson currently applies filtering technology at its email gateway to stop some spam, and to our knowledge other carriers are doing the same.<sup>18</sup> Filtering techniques can stop some spam but they are far from perfect. Furthermore, filters likely would not be effective unless the Commission were to require senders of MSCMs to “tag” the message somehow,<sup>19</sup> which may be impractical for SMS messages with a limited number of permitted characters. Filtering can also inadvertently prevent delivery of permissible messages.

In short, Dobson supports the use of filtering technology on a voluntary basis, but does not believe it is the best solution for the Commission to meet its mandate under Section 14(b)(1) of the Act. Certainly, the FCC should not *require* CMRS carriers to employ filtering methods because, as mentioned above, any restrictions designed to reduce illegal spam are properly directed at the senders of spam and not the carriers or ISPs.

***Challenge/Response Mechanisms.*** As mentioned above, Dobson advocates a flat prohibition on any MSCM addressed to a wireless Internet subdomain. Adopting such a ban would negate the need to implement the proposed challenge/response mechanism, which would be costly for carriers to implement. Dobson also questions the true effectiveness of such a

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<sup>17</sup>*Notice* at ¶ 33.

<sup>18</sup> Although an SMS/MMS message directed to a phone number is not within the definition of a MSCM, we wish to point out that Dobson, and we believe other carriers, employ or will employ measures, such as monitoring unusual message volume, to prevent abuse of their SMS/MMS systems.

<sup>19</sup>*Notice* at ¶ 34.

mechanism, because it would primarily be useful for honest mistakes and not for the mass-spammers, who the Commission should be most concerned about and would likely ignore a “challenge.” Furthermore, to the extent that a challenge-response method would be designed to require the user to take action with respect to each potential sender of an unwanted MSCM, this would be just as burdensome on the recipient as simply viewing the MSCM and then opting out. Moreover, there is no mechanism available to enable the preliminary screening of mobile messages to commercial-only messages. Thus, a challenge-response method would likely burden senders of non-commercial messages as well as MSCMs. There would also be a very real risk of screening out messages desired by the recipient.

### III. Exemption for Messages Sent By Carriers to CMRS Subscribers

The CAN-SPAM Act requires the Commission to consider exempting CMRS carriers from the rules it issues under Section 14(b)(1) under the Act. Such an exemption would allow carriers to send MSCMs to subscribers unless and until the subscriber “opts out” of such messages.<sup>20</sup> Dobson generally supports a carrier exemption for the following reasons.

First, unlike any other sender of MSCMs, a CMRS carrier can ensure that recipients are not charged for receiving or reading the MSCM. The fact that recipients generally pay a fee to access mobile messages is one of the main reasons for Congress’ approach towards limiting unwanted mobile service commercial messages.<sup>21</sup> This rationale simply does not apply to free messages.

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<sup>20</sup>CAN-SPAM Act, § 14(b)(3).

<sup>21</sup>See 149 Cong. Rec. H12854-08 at 12,860 (Congressman Markey: Section 14 “reflects the more intrusive nature of wireless spam . . . for which the user may pay some type of ‘per message’ fee.”)

Second, among available alternatives for a carrier to contact its subscribers, an electronic message to the wireless device is often the least intrusive. Carriers would be permitted, for example, to make some telephone calls to subscribers pursuant to applicable exceptions to the do-not-call rules. Emails (other than MSCMs) to customers would clearly be permitted, subject to the labeling and “opt out” requirements of the CAN-SPAM Act. Dobson believes that in many cases a subscriber would prefer a mobile service commercial message from its carrier rather than a phone call, email, or a bill insert. Indeed, carrier-customer contact is currently one of the primary uses of SMS.

Third, given the special relationship between a carrier and its subscribers, a carrier is uniquely positioned to provide MSCMs on a narrowly tailored basis to certain subscribers sharing common characteristics. Dobson would not send the type of bulk, untargeted messages that are the primary concern of the CAN-SPAM Act. In fact, given the intensely competitive nature of the CMRS market, carriers would be wary of sending bulk MSCMs that subscribers may find undesirable.

The *Notice* seeks comment on whether the “transactional or relationship message” exception in the Act obviates the need to exempt carriers from the Commission’s rules under Section 14(b)(1) of the Act. Dobson submits that the transactional or relationship message exception may not be broad enough to eliminate the need for the carrier exemption.

Under the Act, a “transactional or relationship message” must have as its “primary purpose” one of the listed categories in the definition, such a product safety or warranty information.<sup>22</sup> However, if a message includes, for example, content that relates both to account balance information and to the availability of a new calling plan, it would be difficult if not

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<sup>22</sup>CAN-SPAM Act § 3(17)(A).



impossible to identify the “primary purpose” of the message. This ambiguity may cause some marketers not to send MSCMs, and this may be the intended effect of the Act with respect to senders other than the recipient’s CMRS carrier. However, as explained above, the special relationship between carriers and subscribers makes an MSCM from the carrier much less intrusive, and thus calls for a clearer exception that allows carriers to use MSCMs for the type of marketing otherwise permitted by the Commission’s rules.

There are many other examples of non-intrusive, legitimate (and even expected) messages that a carrier may send as an MSCM that may not qualify as “transactional or relationship” messages. Dobson could announce, for example, that it has opened a new retail outlet by sending a narrowly-targeted message only to phones with billing addresses within a certain distance from the new store. This may or may not be a transactional or relationship message, particularly if Dobson included related offers to its subscribers. Accordingly, Dobson submits that the “primary purpose” transactional or relationship definition is too subjective, and thus would have a chilling effect on customer communication and impose legal risks on the carrier which are unnecessary.

If CMRS subscribers really do not want to receive messages from their carrier, the “opt out” requirement of the Act is sufficient to protect them. An opt in requirement for carriers would require solicitation of consents from all customers, a very burdensome and expensive task. The indication of consent would require some sort of affirmative action from each customer, and a subscriber’s inaction due to inertia may not necessarily reflect the subscriber’s true wishes. The result would be that the utility of this important communications channel would be substantially compromised.

Finally, Congress has empowered the Federal Trade Commission with the right to issue regulations that expand or contract the categories of messages treated as “transactional or

relationship messages.”<sup>23</sup> The FTC may not issue its initial rules under this Section of the Act until the end of 2004,<sup>24</sup> and they could obviously change at any time. Thus, given the special relationship between carriers and subscribers, carriers should not be made subject to developing and changing exceptions to transactional or relationship messages.

#### IV. Other Issues

##### A. Obtaining Express Prior Authorization

The Commission’s rules under Section 14(b)(1) of the Act should allow CMRS subscribers to avoid receiving MSCMs unless the subscriber provides the sender with “express prior authorization.” This authorization should be easily granted and understood so that senders of MSCMs can best comply with the recipient’s wishes. Accordingly, Dobson supports a rule that would allow CMRS subscribers to grant prior authorization electronically, such as by pressing a certain combination of numbers when sending or replying to a message. Any rule should also enable subscribers to indicate consent by accessing a website, whether or not using the wireless device. There should not be any requirement of a physical writing or signature.<sup>25</sup> Any concerns regarding the ease of obtaining express prior authorization can be mitigated by making the electronic mechanism for the recipient to “opt out” of future MSCMs, as required by

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<sup>23</sup>CAN-SPAM Act § 3(17)(B).

<sup>24</sup>*Id.*

<sup>25</sup>For example, a subscriber might “sign up” to receive information on her favorite sports team by visiting a website and clicking an appropriate box. Such services are in their infancy but will likely become more popular quickly, and they may contain advertising in order to provide the service at no cost or minimal cost. A requirement for a written instrument or signature would make such a service nearly impossible to implement.

Section 14(b)(2) of the Act, similarly easy for CMRS subscribers to use and for senders to comply with subscribers' wishes.

B. Labeling and Requirements for Message Content

Section 5(a)(5) of the Act requires senders of commercial electronic mail messages to provide (1) clear and conspicuous notice that the message contains an advertisement or solicitation, (2) clear and conspicuous notice of the recipient's right to "opt out" along with instructions, and (3) a valid physical postal address for the sender. As the *Notice* suggests,<sup>26</sup> these requirements could take up a large proportion of the limited characters available for an SMS message, and given the small screen size of wireless devices, will make an MSCM much less appealing even without limitations on the number of characters that could be used. The requirements of Section 5(b)(5) apply even to messages sent with recipient's prior consent (other than the notice of a solicitation).

The Act empowers the Commission to eliminate or reduce the requirements of Section 5(a)(5) in the case of an MSCM that is otherwise permitted by the Commission's rules. Dobson believes that the Commission should reduce or eliminate these requirements only for MSCMs sent with recipient's prior express authorization under Section 14(b)(1) or pursuant to a carrier exemption under Section 14(b)(3). In each case, the message will be otherwise lawful, so it would make sense to reduce the constraints on reading the message on the intended wireless device. Dobson also believes that notice of the recipient's "opt out" right should still be included in any such MSCM, but the Commission could allow the sender to use an abbreviated opt out instruction to reduce the space used in the message.

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<sup>26</sup>*Notice* at ¶ 42.

## **CONCLUSION**

For the foregoing reasons, the Commission should issue its rules under Section 14 of the Act consistent with these comments.

Respectfully submitted,

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